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OFFICE OF THE SECRETARY

November 30, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445-12th Street, SW
Room TW-204B
Washington, D.C. 20554

RE: Revision of the Commission's Rules to Ensure Compatibility with
Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102,
Cincinnati Bell Wireless LLC's. Petition for Waiver

Dear Ms. Salas:

Enclosed are an original and four copies of Cincinnati Bell Wireless LLC's Petition for Waiver of the Commission's E911 Phase II location technology implementation rules, 47 C.F.R. §§20.18(f), as adopted in the above referenced proceeding. A duplicate original copy of this letter is enclosed; please date stamp this copy as acknowledgement of its receipt and return it. Questions regarding this filing may be directed to me at the above address or by telephone at (513) 397-7260.

Sincerely,

Jouett Kinney
Regulatory Analyst

Enclosures

cc: Patrick Forster, Wireless Telecommunications Bureau
Qualex International (diskette)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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Revision of the Commission's Rules

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To Ensure Compatibility with Enhanced

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911 Emergency Calling Systems

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CC Docket No. 94-102

CINCINNATI BELL WIRELESS LLC
PETITION FOR WAIVER OF THE E911 PHASE II
LOCATION TECHNOLOGY IMPLEMENTATION RULES

Christopher J. Wilson
Attorney for Cincinnati Bell Wireless LLC
201 E. Fourth Street
Room 102-620
Cincinnati, OH 45202

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**CINCINNATI BELL WIRELESS LLC
PETITION FOR WAIVER OF THE E911 PHASE II
LOCATION TECHNOLOGY IMPLEMENTATION RULES**

Cincinnati Bell Wireless LLC ("CBW"), pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. §1.3, and the Commission's Public Notice dated October 12, 2001¹, hereby respectfully requests waiver of the E911 Phase II implementation deadline provisions of Section 20.18(f) of the Commission's rules, 47 C.F.R. §20.18(f). By letter to the Commission dated October 10, 2001, CBW withdrew its amended petition for waiver of the E911 rules filed on May 25, 2001.² At the time the petition was withdrawn, CBW had not yet received a request for Phase II services and was not subject to Phase II obligations. CBW has now received such a request. CBW, therefore, respectfully requests waiver of Section 20.18(f) to permit AT&T Wireless Services, Inc. ("AWS") to deploy a network overlay solution for CBW's TDMA customers. While CBW makes this request for waiver individually, the request mirrors that

¹ Public Notice, "Commission Establishes Schedule for E911 Phase II Requests By Small and Mid-Sized Wireless Carriers," FCC 01-302 (rel. October 12, 2001).

² On May 25, 2001, CBW filed an amended petition for waiver of the E911 Phase II location accuracy and implementation deadline provisions of Sections 20.18(e), (g), and (h) of the Commission's rules, 47 C.F.R. §§ 20.18(e), (g), and (h), in order for AWS to deploy Mobile-Assisted Network Location System ("MNLS") technology for CBW's TDMA customers.

made by AWS in the *Ex Parte* letter filed with the Commission on September 17, 2001.³ For the reasons set forth below, CBW fully satisfies the good cause standard established by *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) for securing a waiver.

INTRODUCTION AND SUMMARY

CBW is an Ohio limited liability company created as a joint venture between Broadwing Inc. (formerly Cincinnati Bell Inc.) and AWS. CBW holds licenses for Broadband PCS services in the Cincinnati and Dayton, Ohio Basic Trading Areas (“BTAs”), covering the greater Cincinnati metropolitan area as well as several counties in northern Kentucky and Indiana.

CBW began providing facilities-based PCS services as a joint venture with AWS in January 1999. Among the agreements underlying the joint venture is the Network Management Agreement (“NMA”), an agreement requiring AWS to provide all planning, engineering, operations, and support functions related to CBW’s PCS network. In accordance with this arrangement, AWS determines hardware and software upgrades for the CBW network and implements them as part of its nation-wide deployment program. Thus, from an engineering and operations perspective, CBW’s network is treated as another AWS market. Planning and implementing E911 upgrades specifically fall within AWS’ responsibilities as part of the NMA.⁴

Based upon its relationship with AWS, as set forth above, CBW requests the same consideration given to the AWS request made on September 17, 2001.⁵ In support of this

³ *Ex Parte* Letter from Douglas I. Brandon, AT&T Wireless Services Inc., to Thomas Sugrue, Chief of the Wireless Telecommunications Bureau, CC Docket No. 94-102, filed September 17, 2001.

⁴ CBW is currently attempting to transition network responsibility from AWS to CBW but has not yet done so completely. At the date of this petition, full operational responsibility for the network remains with AWS.

⁵ In its petition filed on April 4, 2001, AWS based its waiver request in part upon a planned deployment of services utilizing the Global Systems for Mobile Communications (“GSM”) standard. CBW currently offers only TDMA-based services. However, as an AWS affiliate and AWS market, it is probable that CBW will also adopt the GSM standard should CBW decide to deploy services utilizing another standard. Similarly, to the extent the NMA

request, CBW hereby informs the Commission that it intends to abide by relevant guidelines that may be set forth in the anticipated consent decree negotiated by AWS and FCC Enforcement Bureau staff for resolving E911 Phase II compliance issues with respect to TDMA customers.⁶

I. THE LEGAL STANDARD FOR WAIVERS

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. §1.3, the Commission can waive provisions of its rules if good cause is shown. In accordance with the good cause standard established by *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), a waiver is only appropriate where special circumstances warrant a deviation from the general rules and such a deviation is in the public interest.⁷ With respect to E911 Phase II rules specifically, the Commission has stated that waiver of the rules may be appropriate if "technology related issues or exceptional circumstances" make compliance with the Phase II October 1, 2001 deadline impossible to meet.⁸ For the reasons set forth below, CBW fully satisfies the good cause standard for securing a waiver.

II. CBW REQUIRES WAIVER OF THE COMMISSION'S IMPLEMENTATION DEADLINES FOR NETWORK-BASED LOCATION TECHNOLOGIES

CBW requires waiver of the Commission's implementation deadline for network-based location technologies in order for AWS to deploy either the TruePosition or Grayson Wireless' network overlay solution in CBW's network pursuant to the parties' NMA. As explained more

remains in place at the time of any deployment of GSM-based services, it is probable that responsibility for engineering and implementing E911 upgrades would remain with AWS.

⁶ See Press Release, "FCC Acts on Wireless Carrier and Public Safety Requests Regarding Enhanced Wireless 911 Services" (rel. October 5, 2001).

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 D.C. Cir. 1969).

⁸ Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Memorandum Order and Opinion*, FCC 00-326 (rel. Sept. 8, 2000), at ¶43.

fully in AWS' *Ex Parte* letter, AWS plans to deploy one of the two vendor's overlay solutions in its existing TDMA network should the Commission grant its September 17, 2001 request. In accordance with the NMA, the network overlay solution eventually chosen by AWS will also be deployed in CBW's TDMA network.

As stated above, CBW has received a request for Phase II service. CBW will not be able to provide Phase II service within six months of the request, however, due to the unresolved compliance issues surrounding implementation of a Phase II solution for TDMA customers. Once these issues have been resolved and AWS has received approval to proceed with its proposed solution, any request CBW receives for Phase II service will be scheduled for deployment in accordance with Commission action and available resources. For this reason, CBW requests waiver of the Commission's E911 Phase II implementation requirements of Section 20.18(f) of the Commission's rules, 47 C.F.R. §20.18(f).

CONCLUSION

CBW requests waiver of the Commission's rules governing E911 Phase II network-based location technology deadlines. Such a waiver is necessary to permit AWS to deploy a network overlay solution in CBW's TDMA network pursuant to the parties' Network Management Agreement and any Commission action concerning implementation of such a solution. CBW respectfully requests that the Commission give CBW's petition the same consideration given to AWS' request and expeditiously grant the waiver requested herein.

Respectfully submitted,

Cincinnati Bell Wireless LLC

By 

Christopher J. Wilson
Attorney for Cincinnati Bell Wireless LLC
201 East Fourth Street
Room 102-620
Cincinnati, Ohio 45202

November 30, 2001